United States Court of Appeals

for the Second Circuit

APPENDIX

B P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1573-A

H. PERINE,

Plaintiff-Appellant

-against-

WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC.,

Defendants

On Appeal From United States District Court
For The Southern District of New York

JOINT APPENDIX

KAUFMAN TAYLOR KIMMEL & MILLER
Attorneys for Plaintiff-Appellant
41 E. 42nd Street
New York, N. Y. 10017

FELDSHUH & FRANK
Attorneys for Defendant-Appellee
William Norton & Company, Inc.
144 E. 44th Street
New York, N. Y. 10017

PAGINATION AS IN ORIGINAL COPY

INDEX

H. PERLM VS. WILLIAM NORTON ETC, ET-AL

JUDGE WARD 73 CIV. 1724

DATE	PROCEEDINGS	Date O- Judgment
Apr18-73	Filed Complaint. Issued Summons.	
May 11.73	Filed ANSWER.BY William Norton Co., Inc.	FF
May 11.73	Filed Dft. William Norton Co., Inc. Notice to take deposition	
May 11.73	Filed Summons and marshals ret. Served: William Norton & Co.,& William Norton on 4/19/73.	
May 22,73	Filed Pltff. Notice of Deposition upon dfts.	
May 29,73	Filed Stip & Order that deposition of William Norton & Co. be adjourned to 6/4/73, etc Ward J.	
Jun 21.73	Filed Affidavit by Stanley L. Kaufman to serve process. Clerk.	
July 10.73	Filed Affidavit of Counsel by Donald A. Derfner to adjournthe pltffs. motion for a period of 2 weeks.	
July 5.73	Filed Memorandum of Law in support of summary judgment & other relief.	
July 5.73	Filed Pltffs. Notice of Motion Re: Summary Judgement & to Amende Complaint. ret. 7/10/73.	
Jul 19,73	Filed Dft. Designcraft Jewel Industries Inc. ANSWER.	CAK
Jul-24-73	Filed Cross Notice of Motion on behalf of Dft. William Norton & Co., Inc., Re: Dismiss Complaint,etc. ret. 7/24/73.	
Jul-24-73	Filed Memorandum of Law on behalf of Dft. William Norton & Co., Inc.	FF
Mar 19.74	Filed Opinion #40714. Pltffs. motion is denied. Defts. Norton's cross motion for summary judgment is granted & the complaint is dismissed. Settle Judgment on notice. Ward J.	
Mar 19.74	Filed Memo. End. on Pltffs. Motion dated 7/5/73. Motion denied in accordance with opinion filed herewith. Ward J.(mailed notice)	
Mar 19.74	Filed Memo. End on Deft. Motion dated 7/24/73. Motion granted in accordance with opinion filed herewith. Ward J. (mailed notice)	
Apr 2.74	Filed Order & Judgment. Order defts motion for summary judgment is granted;& judgment is entered in favor of defts. dismissing the action on the merits for failure of the pltff. to state a claim upon which relief can be granted & defts recover their costs, Ward J. Mailed notice	
Apr 2.74	Filed Order & Judgment. Defts. summary judgment is granted; & Judgment is entered in favor of defts. dismissing action;& defts recover their costs. Ward J.	
Apr 9.74	Filed Notice of entry of Order & Judgmentfiled on 3/19/74.	
Apr 25.74	Filed Pltffs. Notice of Appeal from final judgment on 4/2/74.(mailed notice)	
Apr 25.74	Filed Undertaking for costs on appeal in the amt. of $250.00, by National Surety Co., Bond No. 2435900.	

A TRUE COPY
RAYMOND F. BURGHARDT, CLERK
By [illegible] Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

H. PERINE, :

Plaintiff, :

-against- : Civil Action No.

WILLIAM NORTON & COMPANY, INC., :
WILLIAM NORTON, ELINORE NORTON and
DESIGNCRAFT JEWEL INDUSTRIES, INC., : COMPLAINT

Defendants. :

----------x

Plaintiff, by Kaufman, Taylor, Kimmel & Miller, his attorneys, complaining of the defendants, for his complaint respectfully alleges upon information and belief:

1. This action arises under the provisions of Sections 16(b) and 20 of the Securities Exchange Act of 1934, (the "Act") as amended, 15 U.S.C. §78p(b) and §78t, and jurisdiction is conferred upon this Court by Section 27 of that Act, 15 U.S.C. §78aa.

2. Plaintiff is and has been since on or about November 3, 1972 the owner of common stock of DESIGNCRAFT JEWEL INDUSTRIES, INC. ("DESIGNCRAFT") and brings this action on behalf and for the benefit of DESIGNCRAFT.

3. DESIGNCRAFT is a New York corporation.

4. At all times referred to herein, the common stock of DESIGNCRAFT was subject to regulation under the Act and governed by Section 16 thereof.

5. The acts and transactions constituting the violations of Section 16(b) hereinafter alleged occurred in the Southern District of New York.

6. On or about May 23, 1972 WILLIAM NORTON & COMPANY, INC. ("NORTON CO.") purchased approximately 250,000 shares of DESIGNCRAFT common stock and became the beneficial owner of more than 10 percent of DESIGNCRAFT's outstanding common stock.

7. On or about May 23, 1972 WILLIAM NORTON and/or ELINORE NORTON by reason of their ownership of and control over NORTON CO. purchased said approximately 250,000 shares of DESIGNCRAFT common stock and became the beneficial owner of more than 10 percent of DESIGNCRAFT's outstanding common stock.

8. Within a period of less than six months from said purchase NORTON CO. sold 250,000 shares of DESIGNCRAFT's common stock.

9. Within a period of less than six months from said purchase WILLIAM NORTON and/or ELINORE NORTON by reason of their ownership and control over NORTON CO. sold said 250,000 shares of DESIGNCRAFT's common stock.

10. NORTON CO. realized from such purchase and sale a profit of at least $300,000. Said profit inures to and is recoverable by DESIGNCRAFT by virtue of §16(b) of the Act.

11. WILLIAM NORTON and/or ELINORE NORTON realized from such purchase and sale a profit of at least $300,000. Said profit inures to and is recoverable by DESIGNCRAFT by virtue of §16(b) of the Act.

12. NORTON CO., WILLIAM NORTON and/or ELINORE NORTON are liable jointly and severally to DESIGNCRAFT for said profit.

13. At the times of said purchase and sale WILLIAM NORTON and/or ELINORE NORTON controlled NORTON CO. and are also liable to DESIGNCRAFT, jointly and severally and to the same extent as NORTON CO., under §20 of the Act as a controlling person or persons.

14. A demand upon DESIGNCRAFT to bring this action is unnecessary and would be futile for the reasons that: (a) said purchase of DESIGNCRAFT shares was made by NORTON CO., WILLIAN NORTON and/or ELINORE NORTON directly from DESIGNCRAFT and not from outside stockholders; (b) said purchase and said sale were made by said defendants with the collaboration and assistance of DESIGNCRAFT and DESIGNCRAFT has had since in or about May, 1972 full knowledge of the facts which form the basis for this lawsuit; (c) it is unlikely that DESIGNCRAFT will conscientiously and diligently prosecute this action for the foregoing reasons and because it has granted NORTON CO. preferential rights with respect to public offering and sale of DESIGNCRAFT's securities until approximately May of 1974 and the economic interests of the management of DESIGNCRAFT are thus to this extent identified with those of the defendants.

15. This action is not a collusive one to confer upon a Court of the United States jurisdiction of a cause over which it would not otherwise have cognizance.

16. This suit is brought within two years after the date the said profit was realized.

WHEREFORE, plaintiff demands a judgment and decree as follows:

(A) That defendants NORTON CO., WILLIAM NORTON and/or ELINORE NORTON pay over to DESIGNCRAFT the amount of their profits with interest;

(B) That plaintiff be awarded costs and disbursements, including reasonable counsel fees; and

(C) That such other and further relief be granted as the Court may deem proper in the premises.

KAUFMAN, TAYLOR, KIMMEL & MILLER
Attorneys for Plaintiff

By Stanley A. Kaufman
A Member of the Firm

41 East 42nd Street
New York, New York 10017
682-2983

STATE OF NEW YORK)
: S.S.:
COUNTY OF NEW YORK)

STANLEY L. KAUFMAN, being duly sworn, deposes and says that he is a member of the firm of Kaufman, Taylor, Kimmel & Miller, attorneys for the plaintiff herein, and has his office at 41 East 42nd Street, New York, N.Y. 10017; that he has read the foregoing complaint and knows the contents thereof and believes the matters stated therein to be true. The reason this verification is made by deponent instead of by the plaintiff is because the plaintiff resides outside the County of New York, which is the County where deponent has his office. Deponent further states that the ground of his belief as to all matters in the complaint is his investigation of the law and of the facts of this case, primarily from documents on public file.

Stanley L. Kaufman
STANLEY L. KAUFMAN

Sworn to before me this
18th day of April, 1973.

Notary Public

IMOGENE SMITH
Notary Public, State of New York
No. 31-0030315
Qualified in New York County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
for the
Southern District of New York

H. PERINE, Plaintiff	:	73 Civ. 1724
-against-	:	RJW
WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC., Defendants	:	ANSWER

Defendant, WILLIAM NORTON & COMPANY, INC., for its answer to the complaint herein:

FIRST DEFENSE

1. Denies each and every averment set forth in the complaint, except denies knowledge and information sufficient to form a belief as to the averments contained in paragraphs 2 and 4 of the complaint.

SECOND DEFENSE

2. The complaint herein fails to state a claim against the defendant, upon which relief can be granted.

THIRD DEFENSE

3. This Court lacks subject matter jurisdiction in that Securities and Exchange Commission regulation §240.16b-2 specifically exempts the defendant from liability under §16(b) of the Exchange Act of 1934.

WHEREFORE, defendant demands judgment against the plaintiff as follows:

(a) dismissing the complaint herein, with costs;

(b) granting such other, further and different relief as to this Court may be deemed just, proper and equitable in the premises.

Dated: New York, New York,
May 8, 1973.

FELDSHUH & FRANK

by Martin M. Frank

MARTIN M. FRANK
a Member of the Firm
Attorneys for Defendant
William Norton & Company, Inc.
Office & P. O. Address
144 East 44th Street
New York, New York 10017
(212) 687-8930

TO: Kaufman, Taylor, Kimmel
& Miller
41 East 42nd Street
New York, New York 10017
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H. PERINE, Plaintiff,	73 Civ. 1724 (RJW)
-against-	ANSWER OF DEFENDANT DESIGNCRAFT JEWEL INDUSTRIES, INC.
WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC., Defendants.	

Defendant, Designcraft Jewel Industries, Inc. ("Designcraft"), by its attorneys, Galpeer, Altus & Karp, in answer to the Complaint herein, states as follows:

1. Designcraft is a New York corporation with offices located at 380 Second Avenue, New York, New York.

2. The within action has been brought on behalf of Designcraft, and accordingly, the Complaint does not seek any relief against Designcraft. Consequently, Designcraft neither admits nor denies the truth of the allegations contained in the Complaint and leaves these matters to the proof to be adduced by the parties.

GALPEER, ALTUS & KARP

By _____
A Member of the Firm
Attorneys for Defendant
Designcraft Jewel Industries, Inc.
Office and Post Office Address:
245 Park Avenue
New York, New York 10017
(212) 661-5560

Dated: July 18, 1973
New York, New York

CERTIFICATE OF SERVICE

State of New York)
) ss.:
County of New York)

The undersigned, Pierre E. Mailloux, hereby certifies that he served a copy of the foregoing Answer to the Complaint this 18th day of July, 1973, by mailing a copy thereof, properly addressed and postage pre-paid, upon the following:

Stanley Kaufman, Esq.
Kaufman, Taylor, Kimmel & Miller
Attorneys for Plaintiff, H. Perine
41 East 42 Street
New York, New York 10017

Feldshuh & Frank, Esqs.
Attorneys for defendant, William Norton & Company, Inc., William Norton, Elinore Norton
144 East 44 Street
New York, New York

Pierre E. Mailloux

Pierre E. Mailloux, Esq.

Signed and sworn to before me

this 18th day of July, 1973

Gertrude Kornblum

Notary Public

GERTRUDE KORNBLUM
Notary Public, State of New York
No. 31-7339600
Qualified in New York County
Term Expires March 30, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

H. PERINE,	:	
Plaintiff,	:	73 Civ. 1724 (RJW)
-against-	:	MOTION FOR SUMMARY JUDGMENT AND TO AMEND COMPLAINT
WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC.,	:	
Defendants.	:	

S I R S :

PLEASE TAKE NOTICE that upon the Complaint herein and upon the affidavit of STANLEY L. KAUFMAN, sworn to June 21 , 1973, and the exhibits annexed thereto, plaintiff will move this court before JUDGE ROBERT J. WARD, on July 10 , 1973, in the United States Courthouse, Foley Square, New York, N.Y., at 2:15 P.M.

(A) For partial summary judgment on the issue of liability on the present complaint, pursuant to Rule 56 FRCP;

(B) For an order pursuant to Rules 15, 18, 20 and 21 FRCP permitting plaintiff to serve an amended and supplemental complaint in the form proposed and annexed hereto; permitting plaintiff to add the additional defendants designated in the proposed amended and supplemental complaint by service upon them of a supplemental summons and the amended and supplemental complaint; and

(C) For a preliminary injunction pursuant to Rule 65 FRCP requiring defendants, their agents, servants, employees and

attorneys and all persons in active concert with defendants pending the final hearing and determination of this action to deposit in Court any property of WILLIAM NORTON and/or ELINORE NORTON and/or NORCO MANAGEMENT COMPANY, INC. in defendants' possession, custody or control subject to further disposition thereof by the court upon the final determination of this lawsuit; and

(D) For such other and further relief as may be just and proper in the premises.

Dated: June 21, 1973
New York, N.Y.

Yours etc.,

KAUFMAN, TAYLOR, KIMMEL & MILLER

by _____
A Member of the Firm
41 East 42nd Street
New York, N.Y. 10017

212 MU 2-2983

TO:

FELDSHUH & FRANK
144 East 44th Street
New York, N. Y. 10017

DESIGNCRAFT JEWEL INDUSTRIES, INC.
380 Second Avenue
New York, N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H. PERINE,	:	
Plaintiff,	:	73 Civ. 1724 (RJW)
-against-	:	RULE 9(g) STATEMENT
WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC.,	:	
Defendants.	:	

Statement by plaintiff of the Material Facts as to which there is no Genuine Issue to be tried (Rule 9(g) of the General Rules for the Southern and Eastern District of New York)

1. Jurisdiction of this action is based on Section 27 of the Securities Exchange Act of 1934 ("Exchange Act") 15 U.S.C. §78aa.

2. The defendant, DESIGNCRAFT JEWEL INDUSTRIES, INC. ("DESIGNCRAFT"), is a corporation organized and existing under the laws of the State of New York.

3. At all times mentioned in the Complaint DESIGNCRAFT had 817,500 shares of common stock outstanding.

4. At all times mentioned in the Complaint the said issued and outstanding shares of common stock of DESIGNCRAFT were subject to Section 16(b) of the Exchange Act.

5. WILLIAM NORTON & COMPANY, INC. ("NORTON CO.") was the direct beneficial owner of more than 10% of DESIGNCRAFT'S outstand-

ing common stock at all times mentioned in the Complaint.

6. WILLIAM NORTON ("NORTON") was the indirect beneficial owner of more than 10% of DESIGNCRAFT'S outstanding common stock at all times mentioned in the Complaint.

7. NORTON CO. (& NORTON, indirectly) purchased 250,000 shares of DESIGNCRAFT common stock on or about May 23, 1973.

8. NORTON CO. (& NORTON, indirectly) sold 250,000 shares of DESIGNCRAFT common stock prior to July 31, 1973.

9. NORTON CO. (& NORTON, indirectly) realized a profit in connection with said purchase and sale within a period of six months.

10. Plaintiff has been a stockholder of DESIGNCRAFT continuously since prior to the commencement of this action.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

H. PERINE,	:	
Plaintiff,	:	73 Civ. 1724 (RJW)
-against-	:	AFFIDAVIT
WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC.,	:	
Defendants.	:	

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

STANLEY L. KAUFMAN, being duly sworn, deposes and says:

1. I am a member of the firm of KAUFMAN, TAYLOR, KIMMEL & MILLER, attorneys for the plaintiff herein, and am familiar with the facts and circumstances of this case. The action is brought on behalf and for the benefit of DESIGNCRAFT JEWEL INDUSTRIES, INC. ("DESIGNCRAFT").

2. This affidavit is in support of plaintiff's motion (1) for summary judgment on behalf of DESIGNCRAFT; (2) to amend and supplement the complaint and add additional parties; and (3) for an injunction restraining the transmission of certain assets of certain defendants to be deposited in court pending final determination of this action so as to prevent a fraudulent conveyance thereof.

3. This is an action to recover short-swing profits realized in the purchase and sale of DESIGNCRAFT stock in violation of §16(b) of the Securities Exchange Act of 1934 (the "Act").

DESIGNCRAFT is the "issuer" of the securities as that word is defined in §16. The principal defendants from whom recovery is sought are WILLIAM NORTON & COMPANY, INC. ("NORTON CO."), WILLIAM NORTON ("NORTON") and ELINORE NORTON.

THE MOTION FOR SUMMARY JUDGMENT

4. Plaintiff moves for partial summary judgment on the issue of liability, only. Determination of damages may be reserved, under Rule 56, for a later trial or inquest.

5. There is no question but that NORTON CO. purchased 250,000 shares of the nominal defendant's, (DESIGNCRAFT) common stock on or about May 23, 1973 for $10.24 per share. It is equally clear that NORTON CO. sold most of said shares for $11.25 per share and the balance for $10.92 per share.(See cover page and page 19 of DESIGNCRAFT Prospectus dated May 23, 1972,annexed hereto as Exhibit "A").

6. Of the 300,000 shares offered by the Prospectus 250,000 were purchased by NORTON CO. and were sold by NORTON CO. within six months of the date of purchase as is evidenced by Listing Application No. 10033-American Stock Exchange, Inc. dated July 31, 1972, the relevant portions of which are annexed hereto as Exhibit "B".

7. The number of shares purchased by NORTON CO. was 250,000 shares, which was about 30 per cent of the total adjusted outstanding common stock of DESIGNCRAFT, to wit, 817,500 shares, or well over the 10 per cent necessary to fall within the proscription of §16(b). NORTON owned approximately 90 per cent of the outstanding stock of NORTON CO. which rendered NORTON, himself

the indirect beneficial owner of approximately 27% of DESIGNCR outstanding stock and also subjected NORTON to §16(b).

8. DESIGNCRAFT was a company duly registered un §12(g) of the Act at the times of purchase and sale and was th subject to §16 thereof.

9. Defendant NORTON COMPANY'S answer states in para 3 thereof that SEC Regulation 240, 16b-2 specifically exempts said defendant from liability under §16(b) of the Act, presuma because NORTON CO. is an underwriter. Regulation 16b-2 is ann hereto and marked Exhibit "C".

10. It is clear from reading the Regulation that it unavailable as an exemption to NORTON CO. because the latter purchased and sold 250,000 shares - over one-half of the offer of 300,000 shares. Thus, there are no other persons "not with the purview of Section 16(b) who [were] participating in the distribution of such block [300,000 shares] of securities..to extent at least equal to the aggregate participation of all pe [NORTON CO.] exempted from the provisions of Section 16(b)...b this §240, 16b-2."

11. It is equally clear that a substantial profit h been realized by NORTON CO. The current president of NORTON CO stated as follows in his deposition taken June 6, 1973, (pp. 4 42):

"Q. Would you tell us how much profit, if any, realized by NORTON & COMPANY, INC. as a result of the underwri of DESIGNCRAFT JEWEL INDUSTRIES, INC., pursuant to the - -

* * *

Q. Can you give us an approximate amount?

A. I would say that it was -- approximately it

would work out to the underwriting commission, less selling group concessions and underwriting concessions and expenses.

Q. Are the selling group concessions stated at any place in Exhibit 5 , that is, in the prospectus?

* * *

A. Yes, it is listed in the underwriting section on Page 19."

12. The exact amount of the profit may await later determination and partial summary judgment may first be given on the issue of liability. (Newmark v. RKO General, 294 F. Supp. 358 (1968).

THE MOTION TO AMEND AND SUPPLEMENT THE COMPLAINT

13. Investigation reveals that NORTON is or has recently been under investigation by the SEC and that he has fled the United States. The depositions of NORTON'S sister-in-law, TOBY L. PACE ("MRS. PACE") and nephew, RANDOLPH K. PACE ("MR. PACE") were taken and they refused to reveal the whereabouts of NORTON. According to MRS. PACE, NORTON and his wife "are travelling" (p. 9). Although, MRS. PACE is now an officer and employee of NORTON CO. she states that she does not hear from NORTON "regularly". The last time was from London"..maybe about two weeks ago." Other sources of information have placed NORTON and his wife in Israel.

14. It is clear that NORTON either sold or gave his interest in NORTON CO. to his nephew, MR. PACE, in or about November 1972 and that NORTON is also engaged in disposing of other assets with a view to making himself judgment proof.

15. In or about December 1968, NORTON purchased a valuable town house at 121 East 62nd Street, New York, N.Y. through Douglas, Gibbons, Holliday and Ives, real estate brokers, from Royal and Louise Van Etten, and placed the title to said valuable property in NORCO MANAGEMENT COMPANY, INC. ("NORCO") a corporation wholly-owned (or substantially wholly-owned) by NORTON.

16. NORTON is now attempting from abroad, to sell 121 East 62nd Street and is using his sister-in-law, MRS. PACE, to accomplish this. She testified:

"Q. Do you have anything to do with any real estate which was owned directly or indirectly by Mr. Norton at 121 East 62nd Street?

A. I don't -- 121 East --

Q. A townhouse at 121 East 62nd Street.

A. Do I have anything to do with it?

I don't own it in any way.

Q. No, but are you handling the sale or rental of that real estate?

A. Oh, I speak to real estate agents from time to time.

Q. Is that owned by Mr. Norton?

A. I don't know who it is owned by.

MR. DERFNER: Don't answer that."

* * * .(P. 6)

17. MRS. PACE'S counsel also directed her not to reveal whether NORTON owned a house in Middleville, N.J., which he

apparently does, at least until recently.

18. NORTON'S nephew, RANDOLPH PACE, acquired all the stock in NORTON CO. from NORTON - 10 per cent in 1971 and 90 per cent on November 30, 1972—when NORTON was in difficulty or threatened with difficulty from the SEC (although MR. PACE refused to answer why NORTON had transferred the NORTON CO. to him). MR. PACE, however, revealed that NORTON had recently disposed of his property in Middleville, N.J. He refused to give any information regarding NORCO, the record owner of 121 East 62nd Street, or whether NORTON had asked him to handle the liquidation thereof.

19. MR. PACE testified that NORTON had made a subordinated loan to NORTON CO. (now owned 100% by MR. PACE) which was still unpaid. MR. PACE also refused to answer a question as to whether he had any agreement to turn over any funds of NORTON CO. to NORTON "oral, handshake, written or any other way."

20. From the foregoing there appears to be sufficient basis to add an additional cause of action against NORCO, NORTON CO., MRS. PACE and MR. PACE, pursuant to Rule 18(b) FRCP, in order to forestall possible fraudulent conveyance by those persons of NORTON'S assets to NORTON, himself or elsewhere which would render futile any judgment taken against NORTON CO. and/or NORTON on behalf of DESIGNCRAFT.

21. A copy of the proposed Amended and Supplemental Complaint is annexed hereto. Rule 18 FRCP specifically provides that.."a plaintiff may state a claim for money [the §16(b) claim] and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money."

22. The Amended Complaint basically seeks to impound

any proceeds from any sale of either 121 East 62nd Street (for which NORTON reportedly paid $300,000.) or of the stock of NORCO, which owns 121 East 62nd Street. It also seeks to enjoin the transfer of these premises for an inadequate consideration. Plaintiff also seeks to prevent the payment of any other assets or funds, by the defendants or persons associated with them, to NORTON.

THE REQUEST FOR A PRELIMINARY INJUNCTION

23. The motion for a preliminary injunction pursuant to Rule 65 FRCP is directed against the transfer or payment to NORTON or ELINORE NORTON of any assets or funds by NORTON CO., NORCO, MR. PACE, MRS. PACE or any of their agents, servants, employees, attorneys and persons acting in concert with the foregoing.

24. The two requisites for such an injunction are (a) a probability of success on the part of the plaintiff and (b) a balancing of the injury which will occur to the respective parties if the injunction is or is not granted. As to the probability of success, this will be rendered moot if summary judgment is granted on behalf of DESIGNCRAFT. As to relative injury, no harm can come from restraining a transfer of assets to NORTON and his wife, pending final disposition of this case. It is submitted that such assets as they may be entitled to will not be threatened or dissipated, but rather will be preserved by the granting of the requested injunction.

25. Plaintiff respectfully requests that the relief requested herein be granted in all respects.

Sworn to before me this
21st day of June, 1973.

Stanley P. Kaufman

Regina V. Sosinski

REGINA V. SOSINSKI
Notary Public, State of New York
No. 41-9111054
Qualified in Queens County
Commission Expires March 30, 1974

DESIGNCRAFT JEWEL INDUSTRIES, INC.

300,000 Shares of Common Stock
(Par Value $0.02)

Of the shares offered hereby, 223,750 shares are being sold by the Company, 5,000 shares are being sold by the holders thereof and 71,250 shares are issuable upon conversion of $475,000 principal amount of the Company's outstanding 6½% Convertible Subordinated Debentures due 1973 (which debentures are being sold to the Underwriters by the holders thereof). The Company will receive only the proceeds from its sale of 223,750 shares.

On May 22, 1972 the closing bid price of the Common Stock in the over-the-counter market was $11¾. See "Price Range of Common Stock".

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public	Underwriting Discounts and Commissions(1)(3)	Proceeds to Company(2)	Proceeds to the Selling Securityholders(2)
Per Share	$11.25	$1.01	$10.24	$10.24
Total	$3,375,000.	$303,000.	$2,291,200.	$780,800.

(1) Does not include an accountable expense allowance of up to $35,000 ($0.12 per share) which the Company has agreed to pay to the Underwriters.

(2) Before deducting filing, printing, legal, accounting and miscellaneous expenses of the Company and the Selling Securityholders, other than the accountable expense allowance referred to in Note (1), estimated at $87,000 (approximately $0.29 per share), all of which are payable by the Company.

(3) The Company and certain of its stockholders have agreed to sell to the Underwriters for $300 Warrants to purchase 30,000 shares of Common Stock exercisable for a period of five years commencing one year from May 31, 1972 at an initial price of $12.04 per share and to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, and the Company has granted the Underwriters preferential rights to certain future financings. See "Underwriting".

The Company intends to apply to list its Common Stock on the American Stock Exchange. Favorable action on such application will be conditioned upon compliance with the listing requirements of the American Stock Exchange, including completion of distribution of the Common Stock in a manner satisfactory to such Exchange.

These shares are offered, subject to prior sale, when, as and if issued and delivered to and accepted by the Underwriters, and subject to certain other conditions. The Underwriters reserve the right, in their discretion, to reject, in whole or in part, any order for the purchase of the shares of Common Stock.

WILLIAM NORTON & COMPANY, INC.

The date of this Prospectus is May 23, 1972.

UNDERWRITING

The Underwriters have severally agreed, subject to the terms of the underwriting agreement, to purchase 223,750 shares of Common Stock from the Company and 5,000 shares of Common Stock from the holders thereof (the "Selling Stockholders"). In addition, the Underwriters have severally agreed, subject to the terms of the underwriting agreement, to purchase $475,000 principal amount of the Company's outstanding 6½% Convertible Subordinated Debentures due 1973 from the holders thereof (the "Selling Debentureholders") and immediately to convert such debentures (which are convertible into 71,250 shares of Common Stock). The total price to be paid by the Underwriters for such debentures will consist of an amount per underlying share issuable upon conversion thereof which is equal to the price per share payable by the Underwriters to the Company.

The respective principal amounts of such debentures to be purchased from each of the Selling Debentureholders, the number of shares of Common Stock into which such debentures are convertible, the respective numbers of shares of Common Stock to be purchased from the Selling Stockholders, and the respective numbers of shares of Common Stock to be purchased from the Company, by each of the Underwriters, are set forth below opposite the names of the respective Underwriters:

Name and Address	No. of Shares to be Purchased from the Company	No. of Shares to be Purchased from the Selling Stockholders	Principal Amount of Debentures to be Purchased	No. of Shares of Common Stock into which the Debentures are Convertible	Total Commitment
William Norton & Company, Inc. ... 120 Wall Street, New York, N. Y. 10005	186,458 shs.	4,167 shs.	$395,833	59,375 shs.	250,000 shs.
Seidlitz and Company, Inc. ..... 500 Fifth Avenue, New York, N. Y. 10036	37,292	833	79,167	11,875	50,000
	223,750 shs.	5,000 shs.	$475,000	71,250 shs.	300,000 shs.

The nature of the Underwriters' obligation is such that if any of the shares or debentures are purchased, all of them must be purchased. The Company has been advised by the Underwriters that they presently propose to offer substantially all the shares directly to the public at the initial public offering price set forth on the cover page of this prospectus, but may offer a minor portion of the shares to certain dealers at that price less a concession of not more than 33¢ per share; that the Underwriters may allow and such dealers may reallow on sales to certain other dealers a discount of not more than 15¢ per share; and that after the initial public offering the public offering price, concessions and discounts may be changed by the Underwriters.

The Company has agreed to reimburse the Underwriters for certain accountable expenses up to a maximum of $35,000, and has granted the Underwriters preferential rights with respect to public offering and sale of the Company's securities for a two-year period. The Company and the Selling Securityholders have agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended.

The Company and Messrs. Sam and Harry Beckerman have agreed to sell to the Underwriters, for $.01 a warrant, five-year warrants to purchase an aggregate of 30,000 shares of the Company's Common Stock (15,000 shares purchasable from the Company and 15,000 shares purchasable from the Messrs. Beckerman) exercisable at an initial price of $12.04 per share during the year commencing one year after the date of issuance which price increases by 79¢ per share each year thereafter to a maximum of $14.41 per share in the fifth and final year. The number of

The listing application of Designcraft Jewel Industries, Inc., which is set forth below, was approved on August 31, 1972.

The papers and exhibits submitted by the Company in support of its application are available for inspection at the Library of the Exchange.

DESIGNCRAFT JEWEL INDUSTRIES, INC.

(A New York corporation, incorporated August 31, 1956)

COMMON STOCK, $.02 PAR VALUE

CUSIP 250568 20 1

New York, New York
July 31, 1972.

ORIGINAL LISTING:

DESIGNCRAFT JEWEL INDUSTRIES, INC. (the "Company") hereby makes application to the American Stock Exchange, Inc. for the listing of:

817,500 issued and outstanding shares of its Common Stock, $.02 par value, and for authority to add to the list

75,000 additional shares of said Common Stock, upon official notice of issuance, upon exercise of stock options granted to employees of the Company, pursuant to the Company's Qualified Stock Option Plan as described on pages 15 and 16 of the attached Prospectus; and

107,500 additional shares of said Common Stock, upon official notice of issuance, upon exercise of outstanding warrants described on page 16 of the attached Prospectus; making a total of

1,000,000 shares of Common Stock, the listing of which is herein applied for (of a total authorized issue of 1,000,000 shares).

All of said shares of Common Stock, the listing of which is herein applied for are, or when issued as described will be, fully paid and non-assessable, with no personal liability attaching to the ownership thereof.

PROSPECTUS

There is attached hereto and incorporated herein by reference, a copy of the Company's Prospectus, dated May 23, 1972 (the "Prospectus"). A table of contents of the Prospectus appears on page 2 thereof.

The 300,000 shares of Common Stock, offered by the Prospectus have been sold, and the Company and the Selling Securityholders have received the net proceeds thereof, as set forth on the cover page of the Prospectus.

There have been no material changes in the Company's business or properties since the date of the Prospectus, except that on July 12, 1972, Messrs A. Herbert Sandler, Martin Belasco, and Stanley Zainfeld were elected to the Board of Directors of the Company. Mr. Sandler recently retired as First Vice President of Bankers Trust Company. He was employed by the Bank for over twenty-four (24) years, and will remain with Bankers Trust Company as a consultant. Mr. Belasco was also appointed as a Vice President of the Company in charge of sales. He has been employed by the Company for over five (5) years. Mr. Zainfeld joined the Company in 1969, and is a Vice President in charge of the Mathey-Tissot Watch Division. For eighteen (18) years prior thereto, he was a Vice President of the Watch and Jewelry Division of the Zale Corporation. On the same date, Harvey Kritzer and Martin Steinberg were appointed Vice Presidents of the Company.

CAPITALIZATION

Class	Authorized By Charter	Authorized For Issuance	Outstanding	Listing Applied For
Common Stock Par Value $.02.....	1,000,000	1,000,000	817,500	1,000,000

UNISSUED RESERVED SHARES:

Other than the 182,500 shares of Common Stock reserved for the purposes described above, no other unissued shares of Common Stock are reserved for issuance.

[¶ 26,081] [Profits Realized from Purchases and Sales Within Period of Less than Six Months]

Law

Sec. 16(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

.001 Annotations of rulings and decisions under Section 16(b).—See ¶ 26,101. CCH.

.01 Securities of foreign issuers.—For text of Rule 3a12-3 (17 CFR 240.3a12-3) exempting securities of certain foreign issuers from Section 16, see ¶ 21,193.—CCH.

• *Regulations*

[¶ 26,082] Exemption from Section 16(b) of Certain Transactions by Registered Investment Companies

Reg. § 240.16b-1. Any transaction of purchase and sale, or sale and purchase, of a security shall be exempt from the operation of Section 16(b) of the Act, as not comprehended within the purpose of that section, if the transaction is effected by an investment company registered under the Investment Company Act of 1940 and both the purchase and sale of such security have been exempted from the provisions of Section 17(a) of the Investment Company Act of 1940 by an order of the Commission entered pursuant to Section 17(b) of the Act.

[Adopted in Release No. 34-9, September 18, 1934; amended by Release No. 34-1887, September 10, 1938; Release No. 34-4508, October 25, 1950, 15 F. R. 7357.]

[¶ 26,083] Exemption from Section 16(b) of Certain Transactions Effected in Connection with a Distribution

Reg. § 240.16b-2. (a) Any transaction of purchase and sale, or sale and purchase, of a security which is effected in connection with the distribution of a substantial block of securities shall be exempt from the provisions of Section 16(b) of the Act, to the extent specified in this § 240.16b-2, as not comprehended within the purpose of said section, upon the following conditions:

(1) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities;

26

Exc

(2) The security involved in the transaction is (A) a part of such block of securities and is acquired by the person effecting the transaction, with a view to the distribution thereof, from the issuer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities, or (B) a security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution; and

(3) Other persons not within the purview of Section 16(b) of the Act are participating in the distribution of such block of securities on terms at least as favorable as those on which such person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of Section 16(b) of the Act by this § 240.16b-2. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this § 240.16b-2.

(b) The exemption of a transaction pursuant to this § 240.16b-2 with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the conditions of this § 240.16b-2.

[Adopted in Release No. 34-264, June 8, 1935; amended by Release No. 34-535, March 9, 1935; Release No. 34-1080, February 27, 1937; Release No. 34-1887, September 10, 1938; Release No. 34-3907, January 29, 1947, 13 F. R. 8177; Release No. 34-4754, November 1, 1952, 17 F. R. 8901; and Release No. 34-6131, December 4, 1959, 24 F. R. 10100.]

[¶ 26,084] Exemption from Section 16(b) of Acquisitions of Shares of Stock and Stock Options Under Certain Stock Bonus, Stock Option or Similar Plans

Applicability of Text of Prior Rule. Release No. 34-6275 provides that any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right) or any acquisition of a restricted stock option, prior to the issuer's annual meeting of stockholders in 1961 shall be deemed to be exempted from operation of Section 16(b) of the Act by Reg. § 240.16b-3 as herein amended if such acquisition would have been so exempted by Reg. § 240.16b-3 as heretofore in effect [¶ 26,086]. CCH.

Reg. § 240.16b-3. Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right) pursuant to a stock bonus, profit sharing, retirement, incentive, thrift, savings or similar plan, or any acquisition of a qualified or a restricted stock option pursuant to a qualified or a restricted stock option plan, or a stock option pursuant to an employee stock purchase plan, by a director or officer of the issuer of such stock or stock option shall be exempt from the operation of section 16(b) of the Act if the plan meets the following conditions:

(a) The plan has been approved, directly or indirectly, (1) by the affirmative votes of the holders of a majority of the securities of the issuer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the state or other jurisdiction in which the issuer was incorporated, or (2) by the written consent of the holders of a majority

EX C-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H. PERINE, Plaintiff -against- WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC., Defendants	73 Civil 1724 (RJW) CROSS-NOTICE OF MOTION ON BEHALF OF DEFENDANT WILLIAM NORTON & COMPANY, INC.

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Martin M. Frank, Esq., duly sworn to the 24th day of July, 1972; upon plaintiff's motion dated June 21, 1973; and upon all the pleadings and proceedings heretofore had herein, the defendant William Norton & Company, Inc. will cross-move this Court, on the 24th day of July, 1973, at 2:15 o'clock in the afternoon, or as soon thereafter as counsel can be heard, in the Court Room of Hon. Robert J. Ward, in the United States District Court House, located at Foley Square, New York, New York 10007, for an order, pursuant to Rule 56 FRCP:

(a) granting the cross-motion for summary judgment, dismissing the complaint, on behalf of defendant William Norton & Company, Inc.;

(b) or, in the alternative, granting said defendant's cross-motion, dismissing the complaint, for plaintiff's failure to state a claim upon which relief can be granted; and

(c) granting defendant William Norton & Company, Inc. such other, further and different relief as to this Court may be deemed just, proper and equitable in the premises.

Dated: New York, New York,
July 24, 1973.

Yours, etc.

FELDSHUH & FRANK

by

Martin M. Frank,
a Member of the Firm

Attorneys for Defendant
William Norton & Company, Inc.

144 East 44th Street
New York, New York 10017

(212) MU 7-8930

To:

KAUFMAN, TAYLOR, KIMMEL & MILLER, ESQS.
Attorneys for Plaintiff
41 East 42nd Street
New York, New York 10017

(212) MU 2-2093

DESIGNCRAFT JEWEL INDUSTRIES, INC.
380 Second Avenue
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H. PERINE, Plaintiff -against- WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC., Defendants	73 Civil 1724 (RJW) STATEMENT PURSUANT TO RULE 9(g) ON BEHALF OF DEFENDANT WILLIAM NORTON & COMPANY, INC.

Pursuant to Rule 9(g) of the General Rules of this Court, the defendant William Norton & Company, Inc. ("Norton Co."), makes the following statement:

MATERIAL FACTS AS TO WHICH NO GENUINE ISSUE EXISTS TO BE TRIED:

1. That pursuant to the prospectus of Designcraft Jewel Industries, Inc. ("Designcraft"), dated May 23, 1972, Norton Co. was a co-underwriter of the public offering of 300,000 shares of common stock of Designcraft.

2. That pursuant to said underwriting, Norton Co. distributed 250,000 shares of Designcraft stock.

3. That Norton Co. was not a 16(b) insider of Designcraft, by virtue of said underwriting.

4. That Norton Co. was neither a direct or indirect "beneficial owner", as that term is used in Section

16(b), of any shares of stock of Designcraft Jewel Industries, Inc.

5. That William Norton was not a 16(b) insider of Designcraft, by virtue of said underwriting.

6. That William Norton was neither a direct nor an indirect "beneficial owner", as that term is used in Section 16(b) of any shares of stock of Designcraft.

7. That pursuant to said underwriting, Norton Co. did not "realize any profit", as that term is used in Section 16(b).

8. That pursuant to said underwriting, William Norton did not "realize any profit", as that term is used in Section 16(b).

Dated: New York, New York,
July 24th, 1973.

FELDSHUH & FRANK

by _____

Martin M. Frank,
a Member of the Firm

Attorneys for Defendant
William Norton & Company, Inc.
144 East 44th Street
New York, New York 10017
(212) MU 7-8930

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H. PERINE,

Plaintiff

-against-

WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC.,

Defendants

73 Civ. 1724 (RJW)

AFFIDAVIT OF COUNSEL IN SUPPORT OF CROSS-MOTION OF DEFENDANT WILLIAM NORTON & COMPANY, INC., FOR SUMMARY JUDGMENT; TO DISMISS THE COMPLAINT; AND IN OPPOSITION TO THE PLAINTIFF'S MOTION, ETC.

State of New York)
: ss.:
County of New York)

MARTIN M. FRANK, being duly sworn, deposes and says:

1. I am a member of the firm of Feldshuh & Frank, Esqs., attorneys for defendant William Norton & Company, Inc., ("Norton Co."), and am fully familiar with all the facts and circumstances involved herein.

2. I make this affidavit in support of the cross-motion of defendant Norton Co. for summary judgment; for judgment dismissing the complaint herein; and in opposition to plaintiff's motion for summary judgment, to amend and supplement the complaint herein, and for a preliminary injunction.

3. Plaintiff herein seeks to establish an entirely new theory of recovery under Section 16(b) of the Securities and Exchange Act of 1934, as amended ("16(b)"), by extending liability for short-swing trading to an underwriter, who is engaged in a good faith distribution of a substantial block of securities.

4. 16(b) never was intended for such a construction, since, as the Court is well-aware, the purpose of said section is to prevent insiders - be they officers, directors or 10% beneficial owners - from realizing a profit through short-swing trading, inasmuch as such trading would enable them to achieve an unfair advantage vis-a-vis the trading public as a result of inside information which may be available only to such insiders.

5. In the ordinary course of the distribution of securities, pursuant to a public offering, an underwriting is the means by which such distribution is effected.

6. The relationship between the underwriter and the issuer is not one which will place the underwriter in an inside position, regardless of the number of shares which the underwriter is distributing.

7. Recognizing this reality, the Securities and Exchange Commission ("S.E.C.") in 1935, adopted Rule 16 b-2(a) ("16b-2(a)") - [a copy of which is attached hereto as Exhibit 1] - which specifically exempts underwriters from 16(b) coverage, if three conditions are met.

8. In substance, the first two conditions require that:

> (a) the underwriter be participating in a good faith distribution in the regular course of his business; and
>
> (b) the securities be acquired from or through the issuer for the purpose of effecting the distribution.

Plaintiff, in his moving papers, impliedly concedes that Norton Co., has met these first two conditions.

9. The entire foundation of plaintiff's suit is predicated upon his mistaken interpretation of the third condition of 16 b-2(a), which plaintiff claims Norton Co. did not meet and hence, was not exempt from 16(b).

10. 16 b-2(a)(3) provides, in pertinent part, that in order for an underwriter to be exempt from 16(b) liability:

> "Other persons not within the purview of Section 16(b) of the Act are participating in the distribution of such block of securities on terms at least as favorable as those on which such person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of Section 16(b) of the Act by this §240.16b-2..."

11. Plaintiff alleges that Norton Co. purchased more than 10% of the shares of a class of stock of Designcraft Jewelry Industries, Inc. ("Designcraft") in the course of the underwriting in issue, (Norton Co. distributed 250,000 Designcraft shares), and therefore is a 16(b) insider. Furthermore, since the co-underwriter, Seidletz & Company, Inc., did not participate to the same

extent as Norton Co. (Seidletz distributed 50,000 shares of Designcraft). Norton Co. did not comply with 16 b-2(a) 3.

12. Plaintiff is attempting to urge upon this Court an entirely incorrect and erroneous construction of 16 b-2(a)(3) so that it would be interpreted to exclude from 16 b-2(a) an underwriting who becomes a holder of 10% or more of the issuer's stock, by virtue of the underwriting.

13. This argument clearly is contrary to the 16(b) statutory scheme and to the purpose of 16 b-2 (a), which is to insure that the underwriter, who also is a 16 (b) insider of the issuer, prior to, not by virtue of, the underwriting, does not have an unfair advantage in the distribution of the shares. To prevent such advantage, the rule requires other non-insider underwriters to participate with the insider underwriter on a basis at least equal to the insider underwriter. (See SEC Release No. 264, adopted hereto as Exhibit 2). Since Norton & Co. was not an insider of Designcraft before, during or after the underwriting, 16 b-2(a)(3) does not exclude Norton & Co. from the underwriter's exemption.

14. It is quite obvious that the Norton & Co. distribution of Designcraft stock was an exempt transaction in accordance with 16 b-2(a), and that no factual issues regarding Norton & Co.'s exemption from 16(b) liability exists. Therefore, this Court is without subject matter jurisdiction over this action and plaintiff has failed to state a claim upon which relief can be granted.

MOTIONS TO AMEND AND TO PRELIMINARILY ENJOIN

15. By these two motions, plaintiff is seeking to obtain an order of attachment without posting a bond which ordinarily would be required, had he proceeded in the proper manner (Rule 64 FRCP). For this reason along, the motion for preliminary injunction should be denied summarily.

16. For plaintiff to be entitled to an order of attachment, the necessary bond he would have to post would be in the amount of approximately $6,300,000, since, upon information and belief, the assets of Norton & Co. are approximately $1,000,000, and the assets of William Norton and Elinore Norton are approximately $5,000,000. It also should be noted that, according to plaintiff's calculatinns, Norco's assets are worth approximately $300,000. By reason of the extensive amount of monetary assets herein involved, it is abundantly clear why plaintiff has sought to circumnavigate through the back door in an effort to avoid such a vast undertaking.

17. Furthermore, plaintiff's basis for these two motions are rather tenuous and have no basis in law. Initially, it must be noted that plaintiff's contention that the defendant William Norton ("Norton"), who as yet has not been served with process in this action, was the indirect beneficial owner of the relevant Designcraft shares, is contrary to the established case law. Norton merely was a shareholder of Norton & Co. and his interest in the said Designcraft shares extended only to his proportionate share of the corporate assets. Since Norton

was not a beneficial owner of the shares and no longer is affiliated with Norton & Co., he is not even a proper party to this action. Hence, plaintiff has no basis in fact or in law for seeking to have this Court attach the assets of Norton & Co., or of any of the defendants, or proposed defendants.

18. Likewise, plaintiff's averment regarding pendent jurisdiction is faulty, since the second count of his proposed Amended Complaint is an entirely new cause of action, unrelated to Count 1, and it does not arise out of a "common nucleus of operative fact." (See Memorandum of Norton & Co., in opposition to the plaintiff's motions herein).

19. Furthermore, contrary to plaintiff's averments set forth in Paragraph "18" of his proposed Amended Complaint, no true diversity jurisdiction exists therein, because the real plaintiff in interest is Designcraft, a New York corporation, and all the named defendants are residents of the State of New York.

20. It readily is apparent that plaintiff's request for such manifold and diverse relief is improper and wholly unwarranted.

WHEREFORE, defendant Norton & Co. respectfully requests:

(a) that its cross motion for summary judgment, dismissing the complaint, be granted;

(b) that, in the alternative, its cross-motion be granted, dismissing the complaint, for plaintiff's failure to state a claim upon which relief can be granted;

(c) that plaintiff's motion be denied, in its entirety; and

(d) that defendant William Norton & Company, Inc. be granted such other, further and different relief as to this Court may be deemed just, proper and equitable in the premises.

Sworn to before me this
24th day of July, 1973.

MARTIN M. FRANK

[¶ 26,083] Exemption from Section 16(b) of Certain Transactions Effected in Connection with a Distribution

Reg. § 240.16b-2. (a) Any transaction of purchase and sale, or sale and purchase, of a security which is effected in connection with the distribution of a substantial block of securities shall be exempt from the provisions of Section 16(b) of the Act, to the extent specified in this § 240.16b-2, as not comprehended within the purpose of said section, upon the following conditions:

(1) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities;

(2) The security involved in the transaction is (A) a part of such block of securities and is acquired by the person effecting the transaction, with a view to the distribution thereof, from the issuer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities, or (B) a security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution; and

(3) Other persons not within the purview of Section 16(b) of the Act are participating in the distribution of such block of securities on terms at least as favorable as those on which such person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of Section 16(b) of the Act by this § 240.16b-2. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this § 240.16b-2.

(b) The exemption of a transaction pursuant to this § 240.16b-2 with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the conditions of this § 240.16b-2.

[Adopted in Release No. 34-264, June 8, 1935; amended by Release No. 34-535, March 9, 1935; Release No. 34-1080, February 27, 1937; Release No. 34-1887, September 10, 1938; Release No. 34-3907, January 29, 1947, 13 F. R. 8177; Release No. 34-4754, November 1, 1952, 17 F. R. 8901; and Release No. 34-6131, December 4, 1959, 24 F. R. 10100.]

For Release in MORNING NEWSPAPERS of Saturday, June 8, 1935.

SECURITIES AND EXCHANGE COMMISSION
Washington

SECURITIES EXCHANGE ACT OF 1934
Release No. 264 (Class B)

The Securities and Exchange Commission today made public a rule exempting certain transactions by underwriters from the provisions of Section 16 (b) of the Securities Exchange Act. This subsection of the Act requires a person who is the beneficial owner of more than 10 per cent of an equity security registered on a national securities exchange, or an officer or director of the issuer of such a security, to account to the issuer for profits made by purchases and sales of any equity securities of the issuer made within a six-months period.

The new Rule MB2 affords an exemption for certain cases by providing that underwriters who happen to have a member of their firm also an officer or director of the issuer or one of its principal stockholders who are regularly engaged in the business of buying and selling securities need not account to the company for profits realized from purchases and sales made in the distribution of a security for the company, provided that independent underwriters have a participation in the underwriting of at least 50 per cent on identical terms. No exemption, however, is granted from the requirements of Section 16(a) which calls for a full disclosure of these transactions.

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EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

H. PERINE,

Plaintiff,

-against-

WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC.,

Defendants.

----------x

OPINION

73 Civ. 1724 (R.J.W.)

A P P E A R A N C E S

KAUFMAN, TAYLOR, KIMMEL & MILLER, ESQS.
41 East 42nd Street
New York, New York 10017
Attorneys for Plaintiff

STANLEY L. KAUFMAN, ESQ.
Of Counsel

FELDSHUH & FRANK, ESQS.
144 East 44th Street
New York, New York 10017
Attorneys for Defendant
William Norton & Company, Inc.

MARTIN M. FRANK, ESQ.
ROBERT BARTELS, ESQ.
DONALD A. DERFNER, ESQ.
Of Counsel

WARD, D. J.

In this shareholder's derivative action, plaintiff moves for summary judgment on the issue of liability, for leave to amend the complaint to add a new cause of action as well as two new individual defendants, and for a preliminary injunction prohibiting the dissipation of assets of defendant William Norton & Company, Inc. ("Norton") in anticipation of judgment. Defendant Norton cross moves for summary judgment dismissing the complaint. For the reasons discussed below, plaintiff's motion is denied in its entirety, and defendant's cross-motion is granted.

Plaintiff, a shareholder of Designcraft Jewel Industries, Inc., ("Designcraft"), brings this action on behalf of that corporation, alleging a violation of §16(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78(p)(b) (hereinafter referred to as §16(b) of "the Act") in connection with the distribution of its shares. Norton, the only actual defendant which has been served, was co-underwriter of a public offering of 300,000 shares of Designcraft in May, 1972, and at that time distributed 250,000 shares. At all relevant times, the total number of outstanding shares in

Designcraft was 817,500. Plaintiff alleges that simply by virtue of its purchase of more than ten percent of the outstanding shares of Designcraft in its underwriting of this public offering, Norton became an insider of Designcraft and liable for all profits upon sale of these shares. Plaintiff does not allege bad faith, or that Norton was an insider by virtue of any other connection with Designcraft.

Plaintiff contends that Norton is not exempted by Reg. §240.16b-2[1] ("Rule 16b-2"), which exempts, upon specified conditions, certain underwriters otherwise covered by §16(b) of the Act, because Norton did not comply with the condition outlined in Rule 16b-2(a)(3). The underwriters covered by Rule 16b-2 are insider-underwriters; the condition allegedly not complied with provides that non-insider-underwriters participate in the distribution on terms at least as favorable, and to at least as great an extent, as the insiders. Plaintiff contends that the doctrine of Stella v. Graham-Paige Motors, 232 F.2d 299 (2d Cir. 1956), cert. den., 352 U.S. 831 (1956), that a purchaser of securities becomes an insider at the time of the purchase which brings his holdings over the ten percent level provided in §16(b) of the Act, strictly applies to underwriters or other distributors of securities. Under

this theory, no underwriter could make a firm commitment to distribute a block of securities larger than ten percent of the outstanding shares of the issuing corporation, unless an equal number of shares were distributed by other underwriters on equally favorable terms.

In the judgment of this Court, such an interpretation is not compelled by the plain meaning of the language of the rule, and serves the purpose neither of §16(b) nor of Rule 16b-2. Moreover, the Securities and Exchange Commission releases which refer to the rule in question indicate that the Commission also does not consider an underwriter of a large block of securities an insider solely by virtue of a single underwriting venture, but understands the provision to refer only to underwriters with some other connection to the issuing corporation.

The courts have recognized that the Act, as a remedial statute, is to be interpreted liberally in the interests of furthering its purpose. See, e.g., Adler v. Klawans, 267 F.2d 840 (2d Cir. 1959); Ellerin v. Massachusetts Mutual Life Insurance Co., 270 F.2d 259 (2d Cir. 1959). The purpose of §16(b) was to prevent unfair use of insider information, unavailable to the public, in obtaining short-swing profits. The mechanism Congress chose was an

objective rule that any profits made when insiders bought and sold securities within six months should inure to the corporation. See II Loss, Securities Regulation 1040 et seq. (1961).

The statutory language does not specify with complete clarity who is an "insider." The provisions of §§16(a) and (b) with respect to reporting and profit-forfeiture apply to transactions by any person who is a director or an officer of a company with an equity security registered on an exchange, or who is "directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security" so registered. 15 U.S.C. §78(p). These persons are commonly referred to as "insiders." The term "beneficial owner" was not defined in the statute, but has been construed in subsequent Commission rules and court decisions. The evident attempt throughout this construction is to include broadly all who benefit from the holdings, not merely record owners, but to exclude from the provisions of the statute those who cannot properly be called insiders. See II Loss, supra, 1100 et seq., and cases cited therein. Thus, partners are individually insiders by virtue of partnership holdings; the courts penetrate intra-family bookkeeping arrangements to ascertain who

is the beneficial owner; but the owner of stock in a holding company which is itself a ten percent beneficial owner of another company need not be concerned with the reporting provisions. Id. These rules and judicial constructions clarify the meaning of "beneficial owner" in the interest of preventing unfair use of inside information in obtaining short-swing profits, thereby effectuating the purpose of this section of the Act.

Stella v. Graham-Paige Motors, supra, interpreting the statutory language "both at the time of purchase and sale," 15 U.S.C. §78(p)(b), held that a purchaser of securities, in that case not an underwriter, becomes an insider at the very time of that purchase which makes him the beneficial owner of more than 10% of the outstanding shares of the corporation. Therefore, the corporation will recover the profits he would otherwise have made on any sale within the next six months. Although no case has been found which so holds, it is recognized that this rule applies to underwriters as well, to the extent that they are within the scope of §16(b). See Comment, 9 Stan. L. Rev. 582 (1957). However, to extend its application to the point of requiring that any "firm commitment" distribution of a single large block of securities be divided among more than one underwriter, even when the single or principal under-

writer acquires his shares solely with a view to distribution and has no prior connection whatsoever with the corporation, and so cannot be said to have profited from access to inside information, would, in the judgment of this Court, unduly hamper the distribution of securities without further effectuating the purpose of the Act. See discussion in 9 Stan. L. Rev. 582 (1957), supra.

The releases of the Securities and Exchange Commission issued since the promulgation of Rule 16b-2 demonstrate that this approach is compatible with the Commission's understanding of §16(b). The rule, as originally promulgated, clearly indicated that its purpose was to exempt underwriters who, prior to the underwriting transaction, had some "insider" status:

> Rule NB2. Exemption from Section 16(b) of Certain Distributing and Underwriting Transactions. Any transaction of purchase and sale of a security shall be exempt from the provisions of Section 16(b), to the extent prescribed in this rule, as not comprehended within the purpose of said subsection, upon condition that:
>
> (a) The person effecting such transaction purchases such security, with a view to the distribution thereof, from a person (1) who is the issuer thereof, or (2) who is participating in good faith in the distribution of the same issue of securities and whose ownership of such security has been acquired within six months, directly or solely through other such participants, from the issuer;

(b) Such transaction is effected by a person who is otherwise engaged in the business of buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business; and

(c) If the person effecting such transaction is either (1) an officer or director of the issuer, (2) a firm of which such officer or director is a partner, or (3) a corporation or other person in respect of which such officer or director is an officer, director or beneficial owner, directly or indirectly, of more than 10 per cent of any class of equity security, then other persons who are not specified in clauses (1), (2) or (3), of this paragraph (c) must have participated in the purchase of such security (or other securities of the same issue) with a view to the distribution thereof, on terms identical with those on which such specified persons have participated and to an extent at least equal to the aggregate participation of all such specified persons.

The exemption of a transaction pursuant to this rule with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the requirements of paragraphs (a), (b), and (c) of this rule.
Sec. Ex. Act Rel. 264 (1935).

The accompanying explanation by the Commission staff emphasizes this purpose:

The new Rule NB2 affords an exemption for certain cases by providing that underwriters who happen to have a member of their firm also an officer or director of the issuer or one of its principal stockholders who are regularly engaged in the business of buying and selling securities need not account to the company for profits

realized from purchases and sales made in the distribution of a security for the company, provided that independent underwriters have a participation in the underwriting of at least 50 per cent on identical terms. No exemption, however, is granted from the requirements of Section 16(a) which calls for a full disclosure of those transactions.
Id.

In 1936 the Commission added a paragraph to the rule, after ¶1 in subsection (c). It explained:

> The second change in the rule enlarges the scope of the original exemption by making it available, on specified conditions, to any person who, with a view to distribution, acquires more than 10% of the equity securities of the issuer from its parent, subsidiary, or commonly controlled affiliate, or from individuals in similar relationships to the issuer. This second change is to become effective immediately.
> Sec. Ex. Act Rel. 535 (1936).

Paragraph (c) then read:

> (c) If the person effecting such transaction is either (1) an officer or director of the issuer, (2) a firm of which such officer or director is a partner, employee, appointee, nominee or representative, or (3) a corporation or other person in respect of which such officer or director is an officer, director, employee, appointee, nominee, representative or beneficial owner, directly or indirectly, of more than 10 per centum of any class of equity security, then other persons who are not specified in clauses (1), (2) or (3), of this paragraph (c) must have participated in the purchase of such security (or other securities of the same issue) with a view to the distribution thereof, on terms identical with those on which such specified persons have participated and to an extent at least equal to the aggregate participation of all such specified persons.

> As used in paragraph (a) of this rule, the term "issuer" shall include, in addition to an "issuer" within the meaning of Section 3(a)(8), any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. As used in this rule, the term "issue" shall include, in addition to an issue of securities issued by an issuer within the meaning of Section 3(a)(8), securities purchased with a view to distribution by the participants in any single distribution from any person directly or indirectly controlling or controlled by the issuer thereof, or from any person under direct or indirect common control with the issuer.
>
> The exemption of a transaction pursuant to this rule with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the requirements of paragraphs (a), (b), and (c) of this rule.
> Id.

In 1947 the Commission again amended the rule, to add a provision that mere receipt of a fee as manager of an underwriting syndicate should not destroy any exemption otherwise applicable. At that time the Commission clearly stated its understanding of the rule's effect:

> These rules conditionally exempt underwriting transactions from Sections 16(b) and 16(c) of the Securities Exchange Act of 1934. Section 16(b) is the section which provides that any profit realized by a beneficial owner of more than ten percent of any class of any equity security registered on a national securities exchange, or by a director or officer of the issuer of such a security, as a result of any purchase and sale (or sale and purchase) of any equity security of such issuer within a period of less than six

months shall inure to the corporation. Section 16(c) prohibits short sales of such equity securities by such persons. The two rules exempt bona fide underwriting transactions by dealers who fall within one of the three classes of "insiders" specified in Section 16, or by dealer firms with which such persons are connected. However, in order to prevent such "insiders" or "insider firms" from acquiring a preferential position where they participate in a distribution, the exemptions afforded by the two rules are subject to the condition that "non-insiders" or "non-insider firms" shall have participated in the distribution "on terms at least as favorable" as those on which the "insiders" have participated and "to an extent at least equal to the aggregate participation" of all"insiders."
Sec. Ex. Act Rel. 3907.

In 1952, however, the Commission restructured the rule. Nothing in its release indicated a shift to the viewpoint that an underwriter could become an insider simply by virtue of its distributing activities. It indicated only that the amendment made in 1936 was being further extended:

> The new rule X-16B-2 broadens the prior rule by providing that the exemption is available for transactions of purchase and sale of securities in the course of a distribution of a block of securities on behalf of a security holder not standing in a control relationship to the issuer, as well as to other public distributions where the transactions are in the course of a public distribution of an issue of securities on behalf of an issuer, or a person who does stand in a control relationship to the issuer.
> Sec. Ex. Act Rel. 4754 (1952).

But the new rule was worded substantially differently than the old rule:

> Rule X-16B-2. Exemption from Section 16(b) of Certain Distributing Transactions.
>
> (a) Any transaction of purchase and sale of a security which is effected in the distribution of a substantial block of securities of the same class shall be exempt from the provisions of Section 16(b) of the Act, to the extent specified in this rule, as not comprehended within the purpose of said section, upon the following conditions:
>
> (1) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities;
>
> (2) The security involved in the transaction is a part of such block of securities and is acquired by the person effecting the transaction, with a view to the distribution thereof, from the issuer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities; and
>
> (3) Other persons not within the purview of Section 16(b) of the Act are participating in the distribution of such block of securities on terms at least as favorable as those on which the person effecting the transaction is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of Section 16(b) of the Act by this rule. However, the performance of the functions of manager of a distri-

buting group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this rule.

(b) The exemption of a transaction pursuant to this rule with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the conditions of this rule. Sec. Ex. Act Rel. 4754 (1952).

This remains the basic structure of the rule.

Courts give authoritative weight to interpretive rules and practices of the agency charged with the administration of an act, which embody interpretations made contemporaneously with the enactment of the statute, or which have been consistently followed over a long period. Davis, Administrative Law Treatise §5.06 (1958). One reason for this maxim is that business is generally transacted in reliance on the interpretive practice. Id. In the same vein, courts give great weight to administrative interpretations of agency rules. See Bowles v. Seminole Rock Co., 325 U.S. 410 (1945); Davis, supra, §5.05, n. 25.

The regulations accompanying Rule 16(b) were originally promulgated to exempt certain clearly defined insiders from liability in particular underwriting situations. As the regulations were amended, the Commission reiterated its understanding of those to whom both the Rule and the

exemption applied. It is apparent that this interpretation serves to effectuate the purpose of the Act, that is, to prevent unfair use of inside information to the relative disadvantage of outsiders. In the absence of a clear indication from the Commission that the original intent of the regulation to cover certain defined insiders was, by its rephrasing in 1952, substantially changed, or any convincing argument that the interpretation advanced by plaintiff would serve to further the purpose of the Act, this Court interprets the language in accordance with the meaning which the agency originally and continuously expressed.

Therefore, the Court holds that upon the facts of this case, the profits made in connection with the distribution of more than 10% of the outstanding shares of Designcraft, by an underwriter with no other "insider" status, shall not inure to the corporation.

Plaintiff's motion is denied. Defendant Norton's cross-motion for summary judgment is granted and the complaint is dismissed.

Settle judgment on notice.

Dated: March 19, 1974

Robert J. Ward
U. S. D. J.

NOTE

1 Reg. §240.16b-2. (a) Any transaction of purchase and sale, or sale and purchase, of a security which is effected in connection with the distribution of a substantial block of securities shall be exempt from the provisions of Section 16(b) of the Act, to the extent specified in this §240.16b-2, as not comprehended within the purpose of said section, upon the following conditions:

(1) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities;

(2) The security involved in the transaction is (A) a part of such block of securities and is acquired by the person effecting the transaction, with a view to the distribution thereof, from the issuer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities, or (B) a security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution; and

(3) Other persons not within the purview of Section 16(b) of the Act are participating in the distribution of such block of securities on terms at least as favorable as those on which such person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of Section 16(b) of the Act by this §240.16b-2. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this §240.16b-2.

(b) The exemption of a transaction pursuant to this §240.16b-2 with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the conditions of this §240.16b-2.
Fed. Sec. L. Rep. ¶26,083.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H. PERINE,

Plaintiff,

-against-

WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC.,

Defendants.

Civil Action No. 73 Civ. 1724 R.J.W.

ORDER and JUDGMENT

A motion having been regularly made by the defendants herein for summary judgment in their favor, dismissing the action and the Court having heard counsel for the respective parties, and due deliberation having been had, and an Opinion of the Court having been filed on March 19, 1974, granting judgment in favor of the defendants dismissing this action, it is hereby

ORDERED, ADJUDGED AND DECREED:

(1) That defendants' motion for summary judgment be, and the same hereby is, granted; and

(2) That judgment be, and the same hereby is, entered in favor of the defendants dismissing the action on the merits for failure of the plaintiff to state a claim upon which relief can be granted, and that the defendants recover their costs of this action.

Dated: New York, New York
April 1st, 1974

/s/ Robert J. Ward
Robert J. Ward
U.S.D.J.

Judgment entered

/s/ Raymond F. Burghardt
Clerk

April 2nd 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H. PERINE, Plaintiff, -against- WILLIAM NORTON & COMPANY, INC., WILLIAM NORTON, ELINORE NORTON and DESIGNCRAFT JEWEL INDUSTRIES, INC., Defendants.	Civil Action No. 73-1724 (RJW) NOTICE OF APPEAL

S I R S :

NOTICE IS HEREBY GIVEN that H. PERINE, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the entire final judgment entered herein on April 2, 1974, which granted summary judgment in favor of defendants and denied the motion of plaintiff for summary judgment.

Dated: New York, N. Y.

April 23, 1974

KAUFMAN, TAYLOR, KIMMEL & MILLER
Attorneys for Plaintiff

by _____
A Member of the Firm
Office & P. O. Address
41 East 42nd Street
New York, N. Y. 10017

Tel. No. MU 2-2983

TO:

CLERK OF THE UNITED
STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FELDSHUH & FRANK, ESQS.
Attorneys for defendants
WILLIAM NORTON & COMPANY, INC.,
WILLIAM NORTON and ELINORE NORTON
144 E. 44th Street
New York, N. Y. 10017

GALPEER, ALTUS & KARP
Attorneys for defendant
DESIGNCRAFT JEWEL INDUSTRIES, INC.
245 Park Avenue
New York, N. Y. 10017